

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
ROCK HILL DIVISION

United States of America,

vs.

Tracey Douglas,

Defendant.

Criminal No. 0:11-520-CMC

**OPINION AND ORDER**

This case comes before the court on Defendant's *pro se* Motion under the First Step Act of 2018. ECF No. 356. Defendant requests appointment of counsel to file a motion under the First Step Act. *Id.* For the reasons explained below, Defendant's motion is denied.

Defendant was indicted on April 20, 2011 on nine counts: Count 1 charged conspiracy to possess with intent to distribute and to distribute 280 grams or more of cocaine base; Counts 2, 6, 7, 8, 9, 10, and 11 charged possession with intent to distribute a quantity of cocaine base; and Count 13 charged possession of a firearm by a felon. ECF No. 2. On June 14, 2011, the Government filed an Information notifying Defendant he was subject to increased penalties due to prior convictions. ECF No. 123. Defendant entered into a Plea Agreement to plead guilty to Count 1, and entered a guilty plea on August 26, 2011. ECF Nos. 151, 153. He was sentenced on November 29, 2011 to 240 months' imprisonment and ten years' supervised release. ECF No. 191.

In 2010, Congress passed the Fair Sentencing Act to reduce the disparity in the treatment of cocaine base and powder cocaine offenses by increasing the quantities of cocaine base required to trigger 21 U.S.C. §§ 841(b)(1)(A) and (B). *See* Pub. L. No. 111-220, 124 Stat. 2372. The First Step Act of 2018 applied these provisions of the Fair Sentencing Act retroactively. *See* Pub. L. No. 115-391, 132 Stat. 5194. Under § 404 of the First Step Act, a court that imposed a sentence for an offense covered under the Fair Sentencing Act "may, on motion of the defendant, . . . impose

a reduced sentence as if sections 2 and 3 of the Fair Sentencing Act of 2010 . . . were in effect at the time the offense was committed.” *Id.* Consideration for a reduction in sentence is not available under the First Step Act “if the sentence was previously imposed . . . in accordance with the amendments made by sections 2 and 3 of the Fair Sentencing Act of 2010.” *Id.* at §404(b).

Defendant was indicted, pled guilty, and sentenced in 2011 – after the enactment of the Fair Sentencing Act of 2010. His sentence was therefore imposed “in accordance with the amendments” of the Fair Sentencing Act, and he is ineligible for a reduction pursuant to the First Step Act. Accordingly, Defendant’s motion to appoint counsel regarding eligibility under the First Step Act (ECF No. 356) is denied.

**IT IS SO ORDERED.**

s/Cameron McGowan Currie  
CAMERON MCGOWAN CURRIE  
Senior United States District Judge

Columbia, South Carolina  
May 9, 2019